

July 26, 2018

Mr. Roddy C. Bachman  
U.S. Coast Guard (CG-OES-2)  
Vessel and Facilities Operating  
2703 Martin Luther King, Jr. Avenue S.E.  
Washington, DC 20593-7509

Subject: EPA Authority Over Construction and Operation  
Texas Gulf Terminals Inc. Deepwater Port Act Project

Dear Mr. Bachman:

EPA Region 6 received a copy of the deepwater port license application package for Texas Gulf Terminals Inc. (TGTI) crude oil export terminal on July 13, 2018, and provides these comments to assist the United States Coast Guard / Maritime Administration (USCG / MARAD) and their contractors as the agencies determine the administrative completeness of the Deepwater Port Act (DPA) license application package and initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA). The overall project will consist of three distinct, but interrelated components: 1) the “offshore” component, 2) the “inshore” component, and 3) the “onshore” component.

The proposed deepwater port (offshore component) would be located approximately 12.7 nautical miles off the coast of North Padre Island (Kleberg County, Texas) and consist of 14.71 miles of two (2) new parallel 30-inch diameter crude oil pipelines, which terminate at a single point mooring (SPM) buoy. The SPM buoy system would be positioned in water depths of approximately 93 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

The inshore components associated with the proposed project includes 5.74 miles of two (2) new 30-inch diameter crude pipelines and onshore valve station used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Laguna Madre bay complex, the Gulf Intracoastal Waterway, and extend across North Padre Island to the mean high tide line located at the interface of North Padre Island and the Gulf of Mexico. Additionally, the inshore project components include the installation of an onshore valve station on North Padre Island to allow for the isolation of portions of the proposed pipeline infrastructure for servicing, maintenance, and inspection operations.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), booster station, and approximately 6.36 miles of two (2) new 30-inch diameter parallel crude pipelines with Nueces and Kleberg counties, Texas. The OSTF would occupy approximately 150 acres in Nueces County, and would consist of all necessary infrastructure to receive, store, measure, and transport crude oil through the proposed

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inshore and deepwater port pipeline infrastructure. (Note – At the time of the application, the TGTI has not determined the number, precise routing, ownership, extent to which destinations other than the OSTF will be served and other details related to the shipment of oil from the production fields to the OSTF. TGTI will be required to supplement the application when this information is available.) The proposed booster station would occupy approximately 8.25 acres in Kleberg County, and would consist of the necessary pumping infrastructure to support the transportation of crude oil from the OSTF to the deepwater port. Onshore pipeline infrastructure would extend from the OSTF to the landward side of the mean high tide line located at the interface of the western shoreline of the Laguna Madre.

EPA Region 6 appreciates this opportunity to provide the following information to the Coast Guard and Maritime Administration as part of the coordinated licensing effort for this facility.

We reviewed the TGTI documents and have determined that the applications for EPA Clean Air Act permit actions are administratively complete in that all of the required EPA forms and certifications were included. However, there is an issue with the Clean Water Act permit application (see below). In addition to the comments below, we reserve the right to request additional information as we more fully examine the permit applications and begin to develop Agency decisions regarding permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in our regulatory permit actions. EPA would appreciate the opportunity to participate in the consultations as an action agency.

**CLEAN WATER ACT.** Due to the nature of the delegation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, EPA Region 6 is the NPDES permitting authority for the project, including onshore, inshore, and offshore discharges.

The Texas Gulf Terminals Inc. deepwater port license application received by EPA Region 6 included a copy of the NPDES permit application forms. In accordance with the applicable Environmental Permit Regulations, (40 CFR 124.3(c), 54 FR 18785, May 2, 1989) this information was reviewed and determined to be administratively incomplete. During the technical analysis of the application, other deficiencies may be determined and a request for additional or clarifying information will be made to the applicant.

The applicant should submit NPDES Form 2E – Application for facilities which do not discharge process wastewater for its hydrostatic test discharge water. NPDES Form 2C is the Application for a permit to discharge wastewater for existing industrial facilities (including manufacturing, commercial, mining and silvicultural operations).

Because the Deepwater Port Act (DPA) designates the proposed type of facility a “new source” for CWA purposes, EPA will consider the information in the MARAD/Coast Guard’s EIS and consultation documents in its NPDES permit action in accordance with CWA § 511(c)(1) and DPA § 5(f). Of particular interest will be the conclusion of consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act; including affects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the construction and operation of the facility. EPA is also intending to reply on the

National Historic Preservation Act consultations with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

**CLEAN AIR ACT.** EPA does not normally administer the Clean Air Act (CAA) in the western Gulf of Mexico because under CAA Section 328, the Department of Interior's Bureau of Ocean Energy Management is responsible for regulating outer continental shelf (OCS) sources in that area. As presented in the application, the proposed source is not an OCS source, so Section 328 does not apply. Instead, EPA is the CAA permitting authority. EPA regards a provision of the DPA, 33 U.S.C. § 1501, *et seq.*, as the primary source of its authority to apply the CAA to activities associated with deepwater ports. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as "new sources" for CAA purposes. Accordingly, for the source's pre-construction and operating permits, EPA will rely on the provisions of Title 1 and Title V of the CAA, supporting applicable regulations and on the state's law to the extent applicable and not inconsistent with federal law. EPA will also consider the information in the MARAD / Coast Guard's EIS and consultation documents in its CAA permit actions, and in particular will rely on the MARAD / Coast Guard's consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act as well as consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

The applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal. EPA concludes that, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at TGTI are those of Texas.

We have not completed our review the permit applications or the supporting modeling analysis included in *Appendix V* of the DWP License application for technical completeness. This is only a preliminary review for administrative completeness. In EPA's preliminary review, air permit related application materials appear to generally include regulatorily required administrative information. After EPA completes a technical review of the applications, additional technical information may be requested in writing or through meetings with the applicant. We reserve the right to inform the applicant that their air permit related applications are technically incomplete pursuant to each set of implementing regulations the applicant has applied under. At this point in EPA's review, we believe that the applications as submitted are administratively complete.

**MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT.** Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the Texas Gulf Terminals Inc. facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or

on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law . . ." MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the SPM facility and pipelines require disposal, MRPSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act. The following information is provided in that event.

The Corpus Christi Ship Channel Ocean Dredged Material Disposal Site (ODMDS) was primarily developed in consultation with US Army Corps of Engineers (USACE) – Galveston to provide placement of suitable navigational sediment. EPA believes it would be beneficial to understand what pertinent information would be helpful should you choose to utilize the ODMDS site.

First, EPA Region 6 looks forward to working with Texas Gulf Terminals Inc. should you choose to utilize the ODMDS. However, EPA also realizes that sometimes dredged material may not be suitable to be used beneficially but the Agency encourages that suitable material should be considered for beneficial uses. EPA encourages that the facility continues to work with all local, state and federal entities to look for suitable beneficial placements. EPA believes that suitable dredged material provides productive purpose from which economic, social or other benefits may be derived. Compared to disposal of dredged material in confined sites, beneficial use reduces the need for disposal. Examples of beneficial use include wetlands restoration, beach nourishment, shoreline construction, and habitat creation. The Clean Water Act (CWA) Section 404 governs discharge of dredged or fill material into "waters of the United States," including the placement of dredged material in the territorial sea for a purpose other than disposal. For information on dredged material permitting under CWA 404, please see our [Section 404 of the Clean Water Act Web page](#).

Second, should the Texas Gulf Terminals Inc. facility choose to utilize the Corpus Christi ODMDS, it is imperative that early coordination with USACE – Galveston and EPA be conducted due to potential site capacity issues for this site. This is an enormous undertaking and will require that all parties work together collaboratively to achieve a successful outcome.

Third, EPA and USACE jointly published the Ocean Testing Manual, a national testing manual for the evaluation of dredged material proposed for ocean dumping (also known as the Green Book). Under section 103 of the MPRSA, any proposed dumping of dredged material into ocean waters must be evaluated through use of EPA's ocean dumping criteria (40 CFR 220-229). The Ocean Testing Manual provides guidance for sampling, testing, and analysis of water, sediment and tissue to evaluate the environmental acceptability of dredged material proposed for ocean disposal. Uncharacterized materials are prohibited from ocean disposal (40 CFR 227.5(c)). Therefore, EPA and USACE review sampling and analysis plans to ensure that each project's sediments are appropriately characterized. EPA recommends that Texas Gulf Terminals Inc. look at the requirements for utilization of the ODMDS should you choose to utilize this site. It is critical that if you should have any questions, to work with USACE – Galveston regulatory to better understand USACE and EPA's role during the permitting process. All 3<sup>rd</sup> party dredging permits are handled by the USACE in coordination with EPA. Evaluation of dredged material for ocean disposal under the Marine Protection, Research and Sanctuaries Act (MPRSA), sometimes referred to as the Ocean Dumping Act, relies on standardized testing using biological organisms (bioassays). The purpose of the evaluation procedures is to ensure efficient and reliable

protection against toxicity and bioaccumulation that otherwise may impair the marine environment or human health. The technical guidance is intended for use by dredging applicants, laboratory scientists, and regulators. Regional guidance is provided in the Regional Implementation Agreement.

Also, if you should need further information about the Region 6 program for Ocean Disposal, please feel free to visit our website at: <https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6> or an overview of the entire program nationally at: <https://www.epa.gov/ocean-dumping>

**COASTAL AND WETLAND RESOURCES.** As we currently understand the project, it would involve anchoring a Single Point Mooring (SPM) buoy in about 93 feet of water approximately 12.7 nautical miles off the coast of North Padre Island and connecting it to inshore components via 14.71 miles of two (2) new parallel 30-inch diameter crude oil pipelines. The inshore components include 5.74 miles of two (2) new 30-inch diameter pipelines and an onshore valve station on North Padre Island. The latter pipelines would transit the Laguna Madre Bay system, the Gulf Intracoastal Waterway, and North Padre Island. The onshore components would include a storage terminal facility that would require a 150-acre site in Nueces County, a booster station located on an 8.5-acre site in Kleberg County, and 6.36 miles of two new 30-inch diameter parallel pipelines crossing through Nueces and Kleberg counties.

It is clear that these components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, it is imperative that all necessary measures be taken to avoid such impacts to the degree possible and to fully mitigate or compensate for those that cannot be avoided. Beyond compliance with the National Environmental Policy Act and the Clean Water Act, there is also a fundamental need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. The rapid deterioration of coastal areas in the northern Gulf of Mexico is regarded by many as one of the nation's most critical ecological problems.

Accordingly, all practicable efforts should be taken to ensure that the proposed project does not inhibit or otherwise conflict with reasonably foreseeable future restoration efforts in this area. Special attention should be afforded to the alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers) and to those found in the Texas Coastal Resiliency Master Plan (Texas General Land Office). Any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs that might be located in areas potentially impacted by this proposal should be evaluated. Coastal natural resource and sensitive species impact mitigation should be coordinated with the Coastal Bend Bays and Estuaries Program.

The impacts from construction and operation of the deepwater port and ancillary facilities, including dredging and any projected impacts to wetlands and special aquatic sites (including seagrass beds), are of particular interest to us and should be analyzed in the draft Environmental Impact Statement (EIS). We would look for a thorough evaluation in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with any proposed dredged material disposal, construction work, and operation and maintenance activities. All unavoidable direct and indirect impacts would need to be fully compensated. In summary, the planning for this project must ensure that adverse

impacts to natural marine resources, coastal wetlands, and special aquatic sites (including seagrass beds) have been avoided to the maximum extent practicable, taking advantage of every opportunity for beneficial use of any dredged material produced.

We recommend that an aquatic resource and wetland mitigation plan be included within the draft EIS, along with the Clean Water Act Section 404 (b)(1) analysis. The mitigation plan should be included in the draft EIS along with the alternatives analyses and any additional information relevant to potential impacts to wetlands and other special aquatic resources. This would ensure that the draft EIS has sufficient information to demonstrate whether potential adverse impacts have been adequately addressed. Providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts. Impacts to aquatic resources and wetlands should include direct and indirect effects, which might include deepwater port service and maintenance functions such as harboring of supply boats and other support vessels. Provisions for ensuring adequate post-implementation project monitoring should be included. In addition, means of assuring mitigation success should also be incorporated into the proposed plan.

Over the years, human uses and natural events have combined to cause a critical habitat loss in this ecologically sensitive area that is important to the long-term protection of resident and migratory shorebirds and sea turtles. Construction and maintenance operations should include plans for avoiding impacts to nesting avian and sea turtle species, particularly those that utilize the shoreline, wetland, and shallow water habitats of North Padre Island and Laguna Madre for any portion of their life cycle.

The environmental analyses should explain whether the SPM location will negate the need for ballast water exchange and the concomitant potential for invasive species introduction. The potential for introduction of these species via other pathways associated with the vessels should also be evaluated.

The draft EIS should include an analysis of marine pollution issues that might arise from the potential increase in foreign vessel traffic in the area.

In addition, the EIS should address any projected marine and coastal natural resource impacts to be expected as a result of hurricanes or tropical storms. As we understand it, the Single Point Mooring system includes anchors attached to the seabed and anchor chains and chain stoppers that allow the buoyed facility to move freely within a defined area. The environmental analysis should explain whether these features would cause bottom scour and impacts to benthic communities. The analysis of alternatives to reduce environmental impacts should also include a comparison of various types of Single Point Mooring systems, including Catenary Anchor Leg Mooring and Single Anchor Leg Mooring.

**NATIONAL ENVIRONMENTAL POLICY ACT.** EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. Additionally, Section 309 of the Clean Air Act requires EPA to review EISs prepared by other agencies and refer projects it finds “environmentally unacceptable” to the President’s Council on Environmental Quality (CEQ).

MARAD/USCG should submit the EIS to EPA through the e-NEPA electronic filing system. Filing instructions are available on EPA's NEPA website at <https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>

Please provide an additional copy of both draft and final EISs to EPA Region 6 for consideration in its NPDES permit action.

**POINT OF CONTACT.** I will be the primary EPA point of contact for communications on the TGTI project. Correspondence should be directed to me as follows:

Robert D. Lawrence  
Senior Policy Advisor – Energy Issues  
EPA Region 6  
1445 Ross Avenue (6MM-A)  
Dallas, TX 75202  
(214) 665-6580

Once again, EPA Region 6 looks forward to working with the Coast Guard and Maritime Administration on this project.

Sincerely yours,

Robert D. Lawrence  
Senior Policy Advisor - Energy Issues

cc: Mr. Matt Kimmel  
Corps of Engineers, Corpus Christi, TX

Ms. Terri Thomas  
Bureau of Ocean Energy Management, New Orleans LA

Dr. Roy E. Crabtree  
NOAA National Marine Fisheries Service, St. Petersburg, FL

Mr. Pat Clements  
Fish & Wildlife Service, Corpus Christi, TX

Ms. Yvette Fields  
Maritime Administration, Washington, DC

Ms. Denise Rogers  
Texas Gulf Terminals, Inc., Houston, TX





Message

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**From:** Hayden, Keith [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=16D884784C23412BA3FB6F29BCDA7833-HAYDEN, WILLIAM]  
**Sent:** 2/11/2019 2:44:58 PM  
**To:** Curtis.E.Borland@uscg.mil  
**CC:** Houston, Robert [Houston.Robert@epa.gov]; Alvarado, Tina [Alvarado.Tina@epa.gov]; Lawrence, Rob [Lawrence.Rob@epa.gov]; Roddy.C.Bachman@uscg.mil; Morefield, Wade (MARAD) [wade.morefield@dot.gov]  
**Subject:** EPA Cooperating Agency acceptance letter for TGTI  
**Attachments:** EPA Cooperating Agency Acept Letter for TGTI DPA EIS.pdf

A hard copy of the attached letter was mailed to Ms. Fields and Captain Brady last Thursday. Please contact Robert Houston if you have any questions regarding the letter.

Sincerely,

Keith Hayden  
Environmental Scientist/NEPA Specialist  
Mail Code: 6EN-WS  
USEPA - Region 6  
1445 Ross Ave.  
Dallas, TX 75202  
e: [hayden.keith@epa.gov](mailto:hayden.keith@epa.gov)  
p: 214.665.2133



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

February 7, 2019

Ms. Yvette Fields  
Maritime Administration  
Office of Deepwater Port Licensing and Offshore Activities  
1200 New Jersey Avenue SE, W23-323 (MAR-530)  
Washington, DC 20590

Captain Sean T. Brady  
Office of Operating and Environmental Standards (CG-OES)  
U.S. Coast Guard Headquarters  
2703 Martin Luther King Jr. Ave. SE STOP 7509  
Washington, DC 20593-7509

Ms. Fields and Captain Brady:

This letter is in response to the U.S. Coast Guard (USCG) and Maritime Administration (MARAD) request, dated December 20, 2018, for the Environmental Protection Agency (EPA) to be a cooperating agency in the development of a National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) for the Texas Gulf Terminal Deepwater Port Project. The EIS will analyze the impacts of the proposed project to the human and natural environment.

The EPA agrees to participate in this proposed project as a cooperating agency. As a cooperating agency, the EPA will:

- provide expertise on NEPA compliance and other subject matter such as wetlands, water quality, air quality, and environmental justice, during EIS planning and development;
- provide timely technical reviews and comments on preliminary documents, reports, analyses, and sections of the EIS;
- participate in meetings and provide information as requested by USCG and MARAD, as resources allow;
- provide sources for information or support in the analysis of such information, when known, during preparation of the EIS in areas in which EPA has expertise;
- review and comment on the EIS pursuant to our regulatory responsibilities under Section 309 of the Clean Air Act.

The EPA anticipates that a cooperative team approach will streamline the environmental process and result in a high quality EIS. If you have any further questions, please contact Robert Houston at (214) 665-8565 or [houston.robert@epa.gov](mailto:houston.robert@epa.gov).

Sincerely,

A handwritten signature in dark ink, appearing to be "Cheryl T. Seager", written over a horizontal dotted line.

Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

**U.S. Department of  
Homeland Security**

**United States  
Coast Guard**



Commandant  
United States Coast Guard

2703 Martin Luther King Jr. Ave. SE  
Washington, DC 20592-7509  
Staff Symbol: CG-OES-2  
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December 20, 2018

U.S. Environmental Protection Agency  
Attn: Mr. Robert Houston  
Chief, Special Projects Section  
1445 Ross Avenue, Suite 1200 (6EN-WS)  
Dallas, Texas 75202-2733  
[Houston.Robert@epa.gov](mailto:Houston.Robert@epa.gov)

Dear Mr. Houston

The U.S. Coast Guard (Coast Guard), in coordination with the Maritime Administration (MARAD), has initiated the preparation of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 – 4370f) (NEPA) for the proposed Texas Gulf Terminals (TGT) deepwater port project, located offshore Corpus Christi, TX. As described below, the U.S. Environmental Protection Agency (EPA) has substantial responsibilities related to the licensing of deepwater ports. Based on your jurisdictional responsibilities, the Coast Guard and MARAD formally invite you to participate as a cooperating agency in the NEPA process for development of the TGT EIS. Your designation as a cooperating agency does not imply your agency's support of the applicant's proposed project, nor does it diminish or otherwise modify your agency's independent statutory obligations and responsibilities under applicable Federal laws, regulations and Executive Orders.

The Deepwater Port Act of 1974 (33 United States Code (U.S.C.) §§ 1501 - 1524) (DWPA) grants the Secretary of Transportation the authority to issue licenses for the ownership, construction and operation of deepwater ports. Deepwater ports are fixed or floating manmade structures, other than a vessel, that are located beyond State seaward boundaries and that are intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State. Pursuant to a delegation from the Secretary of Transportation, MARAD renders the Record of Decision (ROD) and issues the deepwater port license, if an affirmative ROD is granted.

The Coast Guard and MARAD ensure that deepwater port license applications are processed in cooperation with other involved Federal and state agencies and departments and comply with the requirements of NEPA. The DWPA requires

MARAD and the Coast Guard to process deepwater port license applications in a manner that fulfills the permitting requirements of all Federal agencies in carrying out their responsibilities under NEPA.

The U.S. Environmental Protection Agency (EPA) is responsible for administering a wide variety of environmental laws. The responsibilities of EPA relevant to licensing of deepwater ports are primarily associated with assuring such deepwater ports conform with all applicable provisions of the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the Marine Protection, Research, and Sanctuaries Act, as amended. The EPA provides such assurances through communication with MARAD and the Coast Guard and through independent issuance of the permits that those laws require. If within 45 days of the last public hearing on a proposed license for a designated application area (33 U.S.C. § 1503 (c)(6)), the EPA Administrator informs the Maritime Administrator that the deepwater port will not conform to all applicable statutory and regulatory requirements under these statutes, the Secretary may not issue the license.

In accordance with the Council on Environmental Quality (CEQ) final implementing regulations for NEPA (40 C.F.R. § 1501.6 and § 1508.5), the Coast Guard and MARAD request your assistance and participation in the NEPA process for the TGT deepwater port project in a manner that includes, but is not limited to, the following:

- a. Attendance at agency coordination meetings;
- b. Comment and feedback on the EIS schedule, overall scope of the document, and any significant issues related to the EPA's statutory permitting requirements as analyzed in the EIS;
- c. Review and comment on the Interim, Preliminary, Draft and Final EIS;
- d. Guidance on relevant technical studies required as part of the EIS;
- e. Identification of issues related to EPA's jurisdiction by law and special expertise;
- f. Participation, as appropriate, at public meetings and hearings;
- g. Adoption of the Final EIS when needed to fulfill your independent NEPA obligations related to your Federal action and to reduce duplication with other Federal, State, Tribal and local procedures.


Please provide your written acceptance or declination of this invitation on or before January 20, 2019. We look forward to working with your agency on the preparation of the EIS. If you have questions or would like to discuss our respective roles and responsibilities during the NEPA process, please contact Mr. Brad McKittrick, lead Environmental Protection Specialist, at (202) 372-1443/email:

Bradley.K.Mckitrick@uscg.mil; Mr. Roddy Bachman, Coast Guard project lead, at (202) 372-1451/email: Roddy.C.Bachman@uscg.mil; or Mr. Wade Morefield, Transportation Analyst, Office of Deepwater Ports and Offshore Activities, MARAD at (202) 366-7026/email: Wade.Morefield@dot.gov.

Sincerely,



S. T. BRADY  
Chief, Office of Operating & Environmental  
Standards  
U.S. Coast Guard  
By Direction



Yvette M. Fields  
Director, Office of Deepwater  
Port Licensing and Offshore  
Activities  
Maritime Administration

Message

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**From:** Keith Hayden [hayden76@gmail.com]  
**Sent:** 12/17/2018 6:46:31 PM  
**To:** Hayden, Keith [Hayden.Keith@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]  
**Subject:** 2018-16673.pdf  
**Attachments:** 2018-16673.pdf

Federal register notice where MARAD mentions EPA is a cooperating agency.

Keith Hayden

#### 4. Research and Demonstration Capacity

The proposal should demonstrate the applicant's capability and capacity (either internally or through external sources) to conduct research, analysis, and demonstration projects related to mobility management and transportation coordination in support of the CCAM and its members.

#### 5. Management Approach

The proposal must include an effective project management plan to administer and manage the NCMM and must demonstrate that the applicant has the technical capacity to carry out the plan. FTA will evaluate the applicant's:

- a. Technical capacity to administer and manage the services proposed;
- b. Total budget and staffing;
- c. Evidence of understanding of the NCMM mission and comprehensive technical approach to delivering the NCMM;
- d. Plan for evaluation and data collection;
- e. Plan for effective and meaningful stakeholder engagement; and
- f. Plan for coordinating with FTA and other CCAM member staff.

#### F. Federal Award Administration

##### 1. Federal Award Notices

Final award decisions will be made by the Administrator of the Federal Transit Administration. In making these decisions, the Administrator will take into consideration:

- a. Recommendations of the review panel;
- b. past performance of the applicant regarding programmatic and grants management compliance;
- c. the reasonableness of the estimated cost to the government considering the available funding and anticipated results; and
- d. the likelihood that the proposed project will result in the transportation outcomes expected.

The FTA will notify the successful organization and may announce the selection on its website <https://www.transit.dot.gov>. Following notification, the successful entity will be required to submit its application through the FTA Transit Award Management System (TrAMS). The FTA will work with the successful applicant to develop a detailed cooperative agreement. The FTA will award and manage a cooperative agreement through TrAMS.

##### 2. Award Administration

- a. Grant Requirements: The successful applicant will apply for a cooperative

agreement through TrAMS and adhere to the customary FTA grant requirements of Section 5314, Technical Assistance and Workforce Development. There is no pre-award authority for this project. Discretionary grants and cooperative agreements greater than \$500,000 will go through the Congressional notification and release process. Assistance regarding these requirements is available from FTA.

b. Standard Assurances: The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the cooperative agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and that modifications may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a cooperative agreement if it does not have current certifications on file.

##### 3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in TrAMS on a monthly or quarterly basis, as determined by the FTA Project Manager. Documentation is required for payment. Additional reporting may be required specific to the National Center for Mobility Management and the recipient may be expected to participate in events or peer networks related to mobility management and coordinated transportation. The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Sub Award Reporting System (<http://www.FSRS.gov>) for all sub-awards and sub-contracts issued for \$25,000 or more, as well as addressing executive compensation for both grantee and sub-award organizations.

Additionally, FTA is required to report to Congress every year on the value of Section 5314 investments. Applicants will be required to provide details indicating the need, problem, or opportunity addressed by activities of the program. The national significance and relevance to the public transportation industry must also be clearly detailed.

#### 4. Legal Capacity

Applicants must certify that there are no legal issues which would impact their eligibility and authority to apply for FTA funds, or prevent their acceptance of FTA funds.

#### G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Technical Assistance program manager Carl Ringgold by phone at 202-366-6508, or by email at [carl.ringgold@dot.gov](mailto:carl.ringgold@dot.gov). A TDD is available for individuals who are deaf or hard of hearing at 800-877-8339.

**K. Jane Williams,**

*Acting Administrator.*

[FR Doc. 2018-16689 Filed 8-3-18; 8:45 am]

BILLING CODE P

#### DEPARTMENT OF TRANSPORTATION

##### Maritime Administration

[Docket No. MARAD-2018-0114]

##### Deepwater Port License Application: Texas Gulf Terminals, Inc.

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of application.

**SUMMARY:** The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce they have received an application for the licensing of a deepwater port and that the application contains all required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

**DATES:** The Deepwater Port Act of 1974, as amended, requires any public hearing(s) on this application to be held not later than 240 days after publication of this notice, and a decision on the application not later than 90 days after the final public hearing.

**ADDRESSES:** The public docket for MARAD-2018-0114 is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

The license application is available for viewing at the [Regulations.gov](http://www.regulations.gov) website: <http://www.regulations.gov> under docket number MARAD-2018-0114.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. If you submit your comments electronically, it is not necessary to also submit a hard copy. If



you cannot submit material using <http://www.regulations.gov>, please contact either Mr. Roddy Bachman, USCG or Mr. Wade Morefield, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document. This section provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. The Federal Docket Management Facility's telephone number is 202-366-9329, the fax number is 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202-372-1451, email: [Roddy.C.Bachman@uscg.mil](mailto:Roddy.C.Bachman@uscg.mil) or Mr. Wade Morefield, Maritime Administration, telephone: 202-366-7026, email: [Wade.Morefield@dot.gov](mailto:Wade.Morefield@dot.gov). For questions regarding viewing the Docket, call Docket Operations, telephone: 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Receipt of Application**

On July 9, 2018, MARAD and USCG received an application from Texas Gulf Terminals, Inc. (TGTI) for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the export of oil authorized under the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act), and implemented under 33 Code of Federal Regulations (CFR) parts 148, 149, and 150. After a coordinated completeness review by MARAD, the USCG, and other cooperating Federal agencies, it was determined that the application was complete and contains all information necessary to initiate processing of the application.

##### **Background**

The Act defines a deepwater port as any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to, or from, any State. A deepwater port includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed as part of a deepwater port to the extent

they are located seaward of the high water mark.

The Secretary of Transportation delegated to the Maritime Administrator authorities related to licensing deepwater ports (49 CFR 1.93(h)). Statutory and regulatory requirements for processing applications and licensing appear in 33 U.S.C. 1501 *et seq.* and 33 CFR part 148. Under delegations from, and agreements between, the Secretary of Transportation and the Secretary of Homeland Security, applications are jointly processed by MARAD and USCG. Each application is considered on its merits.

In accordance with 33 U.S.C. 1504(f) for all applications, MARAD and the USCG, working in cooperation with other Federal agencies and departments considering a deepwater port application shall comply with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). The U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Pipeline and Hazardous Materials Safety Administration (PHMSA), among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6; may participate in scoping meeting(s); and will incorporate the Environmental Impact Statement (EIS) into their permitting processes. Comments addressed to the EPA, USACE, or other federal cooperating agencies will be incorporated into the Department of Transportation (DOT) docket and considered as the EIS is developed to ensure consistency with the NEPA process.

All connected actions, permits, approvals and authorizations will be considered in the deepwater port license application review.

MARAD, in issuing this Notice of Application pursuant to section 1504(c) of the Act, must designate as an "Adjacent Coastal State" any coastal state which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port (see 33 U.S.C. 1508(a)(1)). Pursuant to the criteria provided in the Act, Texas is the designated Adjacent Coastal State for this application. Other states may apply for Adjacent Coastal State status in accordance with 33 U.S.C. 1508(a)(2).

The Act directs that at least one public hearing take place in each

Adjacent Coastal State, in this case, Texas. Additional public meetings may be conducted to solicit comments for the environmental analysis to include public scoping meetings, or meetings to discuss the Draft EIS and the Final EIS.

MARAD, in coordination with the USCG, will publish additional **Federal Register** notices with information regarding these public meeting(s) and hearing(s) and other procedural milestones, including the NEPA environmental review. The Maritime Administrator's decision, and other key documents, will be filed in the public docket.

The Deepwater Port Act imposes a strict timeline for processing an application. When MARAD and USCG determine that an application is complete (*i.e.*, contains information sufficient to commence processing), the Act directs that all public hearings on the application be concluded within 240 days from the date the Notice of Application is published.

Within 45 days after the final hearing, the Governor of the Adjacent Coastal State, in this case the Governor of Texas, may notify MARAD of their approval, approval with conditions, or disapproval of the application. MARAD may not issue a license without the explicit or presumptive approval of the Governor of the Adjacent Coastal State. During this 45-day period, the Governor may also notify MARAD of inconsistencies between the application and State programs relating to environmental protection, land and water use, and coastal zone management. In this case, MARAD may condition the license to make it consistent with such state programs (33 U.S.C. 1508(b)(1)). MARAD will not consider written approvals or disapprovals of the application from the Governor of the Adjacent Coastal State until after the final public hearing is complete and the 45-day period commences.

The Maritime Administrator must render a decision on the application within 90 days after the final hearing.

In accordance with section 1504(d) of the Act, MARAD designates an application area encompassing the TGTI deepwater port that is a circle having a 12.7 nautical mile radius centered at latitude 27°28'42.60" N and longitude 97°00'48.43" W. Any person interested in applying for the ownership, construction, and operation of a deepwater port within this designated application area must file with MARAD (see **FOR FURTHER INFORMATION CONTACT**) a notice of intent to file an application not later than 60 days after the date of publication of this notice.

Should a favorable record of decision be rendered and license be issued, MARAD may include specific conditions related to design, construction, operations, environmental permitting, monitoring and mitigations, and financial responsibilities. If a license is issued, USCG in coordination with other agencies as appropriate, would oversee the review and approval of engineering, design, and construction; operations/security procedures; waterways management and regulated navigation areas; maritime safety and security requirements; risk assessment; and compliance with domestic and international laws and regulations for vessels that may call on the port. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards.

In addition, installation of pipelines and other structures may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, which are administered by the USACE.

Permits from the EPA may also be required pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

#### Summary of the Application

TGTI is proposing to construct, own, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the DWP would include the loading of various grades of crude oil at flow rates of up to 60,000 barrels per hour (bph). Approximately eight Very Large Crude Carrier (VLCC) vessels (or equivalent volumes) would be loaded per month from the proposed deepwater port. Loading of one VLCC vessel is expected to take 48 hours, including vessel approach, mooring, cargo transfer, and vessel departure.

The overall project would consist of three distinct, but interrelated components: (1) The "offshore" component; (2) the "inshore" component; and (3) the "onshore" component.

The proposed deepwater port (offshore component) would be located approximately 12.7 nautical miles off the coast of North Padre Island (Kleberg County, TX) and consists of 14.71 miles of two new parallel 30-inch diameter crude oil pipelines, which terminate at a single point mooring (SPM) buoy. The SPM buoy system would be positioned in water depths of approximately 93 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment. The SPM would be located in BOEM lease

block number 823 at latitude 27°28'42.60" N and longitude 97°00'48.43" W.

The inshore components associated with the proposed project include 5.74 miles of two new parallel 30-inch diameter pipelines and onshore valve stations used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Laguna Madre Bay complex, the Gulf Intracoastal Waterway, and extend across North Padre Island to the mean high tide line located at the interface of North Padre Island and the Gulf of Mexico. The inshore project components include the installation of an onshore valve station on North Padre Island to allow for the isolation of portions of the proposed pipeline infrastructure for servicing, maintenance, and inspection operations.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), booster station, and approximately 6.36 miles of two new parallel 30-inch diameter pipelines located within Nueces and Kleberg Counties, TX. The OSTF would occupy approximately 150 acres in Nueces County, TX and would consist of all necessary infrastructure to receive, store, measure and transport crude oil through the proposed inshore and deepwater port pipeline infrastructure. The proposed booster station would occupy approximately 8.25 acres in Kleberg County, TX and would consist of the necessary pumping infrastructure to support the transport of crude oil from the OSTF to the deepwater port. Onshore pipeline infrastructure would extend from the OSTF to the landward side of the mean high tide line located at the interface of the western shoreline of the Laguna Madre.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its administrative and rulemaking processes. DOT posts comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or

confidential information, please contact the agency for alternate submission instructions.

(Authority: 33 U.S.C. 1501, *et seq.*; 49 CFR 1.93(h))

Dated: July 31, 2018.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2018-16673 Filed 8-3-18; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF VETERANS AFFAIRS

### Disciplinary Appeals Board Panel

**AGENCY:** Department of Veterans Affairs

**ACTION:** Notice with request for comments.

**SUMMARY:** Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102-40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees. It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the Panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the Panel upon request and may submit comments concerning the suitability for service on the Panel of any employee whose name is on the list.

**DATES:** Names that appear on the Panel may be selected to serve on a Board or as a grievance examiner after September 5, 2018.

**ADDRESSES:** Requests for the list of names of employees on the Panel and written comments may be directed to: Secretary of Veterans Affairs, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Requests and comments may also be faxed to (202) 495-5200.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hayek, Employee Relations & Performance Management Service, Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue NW, Mailstop 051, Washington, DC 20420. Ms. Hayek may be reached at (440) 525-5493.

**SUPPLEMENTARY INFORMATION:** Public Law 102-40 requires that the

Message

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**From:** Alvarado, Tina [Alvarado.Tina@epa.gov]  
**Sent:** 12/11/2018 10:01:37 PM  
**To:** Lawrence, Rob [Lawrence.Rob@epa.gov]  
**CC:** Hayden, Keith [Hayden.Keith@epa.gov]; Larsen, Brent [Larsen.Brent@epa.gov]; Magee, Melanie [Magee.Melanie@epa.gov]  
**Subject:** RE: TGTI - cooperating agency  
**Attachments:** dwp\_white\_house\_task\_force\_energy\_streamlining (1).pdf

This is all we need (see attached MOU). This will apply to all current and future deepwater port projects.

The MOU says that "Participating Agencies may use this MOU as a cooperating agency agreement (CAA) with the lead agencies for the purpose of NEPA compliance or may enter into a supplemental CAA, which would augment this MOU."

Keith – Are you able to put a note in the NEPA files/database so that in the future we will know that this MOU is the CAA and that we don't need a letter?

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**From:** Lawrence, Rob  
**Sent:** Tuesday, December 11, 2018 2:59 PM  
**To:** Alvarado, Tina <Alvarado.Tina@epa.gov>  
**Cc:** Hayden, Keith <Hayden.Keith@epa.gov>; Larsen, Brent <Larsen.Brent@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>  
**Subject:** RE: TGTI - cooperating agency

**There is a paragraph about the NEPA cooperating agency request in this letter from the Region.**

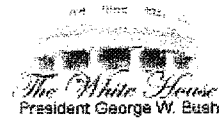
Rob Lawrence  
Region 6  
Policy Advisor - Energy Issues  
214.665.6580

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**From:** Alvarado, Tina  
**Sent:** Tuesday, December 11, 2018 11:10 AM  
**To:** Lawrence, Rob <Lawrence.Rob@epa.gov>  
**Cc:** Hayden, Keith <Hayden.Keith@epa.gov>; Larsen, Brent <Larsen.Brent@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>  
**Subject:** TGTI - cooperating agency

Rob – FYI - I spoke to Keith and we do not have a cooperating agency agreement with MARAD for TGTI. He is going to reach out to Roddy to request that we memorialize our cooperation in writing.

*White House Task Force on Energy Project Streamlining*



MEMORANDUM

TO: SAMUEL W. BODMAN  
MICHAEL W. WYNNE  
JOHN PAUL WOODLEY, JR.  
DAVID K. GARMAN  
THOMAS H. COLLINS  
J. STEVEN GRILES  
PAULA DOBRIANSKY  
KIRK K. VAN TINE  
STEPHEN L. JOHNSON  
PAT WOOD, III

FROM: ROBERT W. MIDDLETON *RW Middleton*  
DIRECTOR  
WHITE HOUSE TASK FORCE ON ENERGY PROJECT STREAMLINING

DATE: May 20, 2004

SUBJECT: MEMORANDUM OF UNDERSTANDING ON DEEPWATER PORT  
LICENSING

Attached is the final Memorandum of Understanding for inter-agency coordination on licensing of Deepwater Ports, pursuant to the Deepwater Port Act, which has been signed by each of the Agencies committed to the Understanding: Departments of Defense, Commerce, Energy, Homeland Security, Interior, State, Transportation; Environmental Protection Agency; and the Federal Energy Regulatory Commission (the "Participating Agencies"). As you know, the White House Task Force on Energy Project Streamlining worked closely with senior staff from all of the Participating Agencies to reach consensus on this initiative.

This Understanding is consistent with the goals of the National Energy Policy and Presidential Executive Order 13212. Additionally, it specifies Agency responsibilities, and establishes an important coordination mechanism to ensure timely and efficient review of deepwater port licenses.

Within this Understanding, the importance of the lead Agency is defined without surrendering any of their statutory responsibility or jurisdiction. It is to establish a process to facilitate upfront and timely processing of deepwater port applications for permitting. The Participating Agencies agree to early communications on each permit application. This will aid each Agency in the use of their time and resources, as well as providing a more understandable process for stakeholders and the public.

Thank you for your support in making this important agreement a reality. Your staff has been instrumental and should be commended.

cc: Karen Abrams, Department of Commerce  
David Kaiser, Department of Commerce  
Robert B. Tomiak, Department of Defense

Get Moy, Department of Defense  
Mark Sudol, Department of Defense  
Chip Smith, Department of Defense  
Sally Kornfeld, Department of Energy  
Mark Prescott, Homeland Security  
David M. Moore, Department of Interior  
Robin Nims-Elliott, Department of Interior  
Steven D. Poulin, Department of State  
Keith Lesnick, Department of Transportation  
L.E. Herrick, Department of Transportation  
Joy Kadnar, Department of Transportation  
Joseph C. Montgomery, Environmental Protection Agency  
Ken Mittelholtz, Environmental Protection Agency  
Robert Arvedlund, Federal Energy Regulatory Commission  
Dinah Bear, Council on Environmental Quality  
Horst Greczmiel, Council on Environmental Quality

Attachment

**MEMORANDUM OF UNDERSTANDING  
RELATED TO THE LICENSING OF DEEPWATER PORTS  
AMONG THE  
US DEPARTMENT OF THE ARMY  
U.S. DEPARTMENT OF COMMERCE  
U.S. DEPARTMENT OF DEFENSE  
U.S. DEPARTMENT OF ENERGY  
U.S. DEPARTMENT OF HOMELAND SECURITY  
U.S. DEPARTMENT OF THE INTERIOR  
U.S. DEPARTMENT OF STATE  
U.S. DEPARTMENT OF TRANSPORTATION  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
FEDERAL ENERGY REGULATORY COMMISSION  
COUNCIL ON ENVIRONMENTAL QUALITY**

**I. Purpose:**

The Purpose of this Memorandum of Understanding (MOU) is to establish a framework for cooperation among the Participating Agencies with responsibilities related to the licensing of deepwater ports pursuant to the Deepwater Port Act of 1974, as amended (DPA).

This Agreement emphasizes the importance for the lead agencies, the U.S. Coast Guard (USCG) and Maritime Administration (MARAD), on behalf of the Secretary of the Department of Homeland Security (DHS) and the Secretary of the Department of Transportation (DOT), respectively, to receive specific information from the other Participating Agencies at key stages of project development to foster an efficient procedure to develop documentation that will meet the statutory requirements of all affected agencies. Specifically, the intent of this MOU is to establish a process to facilitate the timely processing of deepwater port applications, whereby participating agencies will:

- Work together with applicants and other stakeholders, as appropriate, both before and after complete applications for the necessary authorizations or permits are filed;
- Identify and resolve any issues as quickly as possible;
- Attempt to build a consensus among governmental agencies; and
- Expedite the environmental review required for licensing decisions associated with deepwater ports.

**II. Background:**

Executive Order (EO) 13212 ("Actions to Expedite Energy-Related Projects") signed by President Bush on May 18, 2001 (66 FR 28357), sets forth Administration policy that executive departments and agencies must take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. EO 13212 directs agencies to expedite their reviews of authorizations for energy-related projects and to take other action necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protection.

EO 13212 applies to the licensing of deepwater ports under the Deepwater Port Act of 1974 (DPA, 33 U.S.C. 1501, *et seq.*). The Maritime Transportation Security Act of 2002 (P.L. 107-295) amended the DPA in November, 2002 to extend the definition of deepwater ports to cover natural gas, including liquefied natural gas (LNG), facilities. The Secretary of DHS and the Secretary of DOT delegated the processing of deepwater port applications to the USCG and MARAD, respectively. The DPA establishes a specific time frame of 330 days from the date of publication of a Federal Register notice of a "complete" application to the date of approval or denial of a deepwater port license. The USCG and MARAD, in cooperation with other Federal agencies, must comply with the requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4332) within that time frame. Pursuant to § 5(f) of the DPA, Congress anticipates that such compliance will fulfill the requirements of all Federal agencies in carrying out their NEPA responsibilities pursuant to the DPA.

The DPA allows for the licensing of deepwater ports in the Exclusive Economic Zone along all maritime coasts of the US. A variety of energy corporations have submitted applications or have announced their intentions to apply for deepwater port licenses, primarily for LNG.

Consistent with EO 13212 and the cooperation necessitated by the DPA, the Participating Agencies enter into this MOU to expedite actions on pending and future applications for licensing deepwater ports.

### III. Participating Agencies:

The agencies with regulatory responsibilities relevant to deepwater ports in the OCS that are participating in this MOU are:

- U.S. DEPARTMENT OF COMMERCE (DOC)
  - National Oceanic and Atmospheric Administration (NOAA)
  - National Marine Fisheries Service (NOAA Fisheries)
  - National Ocean Service (NOS)
- U.S. DEPARTMENT OF DEFENSE (DOD)
  - (Installations and Environment) Utilities and Energy
  - Secretary of the Army, U.S. Army Corps of Engineers (COE)
- U.S. DEPARTMENT OF ENERGY (DOE)
  - Office of Fossil Energy
- U.S. DEPARTMENT OF HOMELAND SECURITY (DHS)
  - U.S. Coast Guard (USCG)
- U.S. DEPARTMENT OF THE INTERIOR (DOI)
  - Minerals Management Service (MMS)
  - U.S. Fish and Wildlife Service (FWS)
- U.S. DEPARTMENT OF STATE (DOS)
- U.S. DEPARTMENT OF TRANSPORTATION (DOT)
  - Maritime Administration (MARAD)

Research and Special Programs Administration (RSPA)  
U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)  
FEDERAL ENERGY REGULATORY COMMISSION (FERC)  
COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)

NOAA Fisheries, within DOC, is responsible for a variety of activities in marine and coastal ecosystems as mandated by several statutes and authorities. These activities include managing protected species, managing commercial and recreational fisheries, and protecting marine and coastal habitats. These activities are conducted pursuant to a number of environmental laws including the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act (FWCA). Deepwater port construction and operation in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project proposed. Federal agencies authorizing activities that may affect any of these resources are required to consult with NOAA Fisheries regarding adverse affects to these resources and habitats upon which they depend.

The NOS, also within DOC's NOAA, is responsible for various coastal and ocean programs that may be relevant to deepwater ports. NOS administers the Coastal Zone Management Act (CZMA) and approves and works with states to implement comprehensive Coastal Management Programs and National Estuarine Research Reserves and mediates disputes regarding CZMA issues. Under CZMA section 307(c)(3)(A), applicable states must concur with consistency certifications submitted with deepwater port applications before Federal agencies can issue their approvals. NOS also manages designated National Marine Sanctuaries (NMS) and coastal protection and restoration activities. While oil and gas activities are mostly prohibited within NMS, pursuant to Section 304(d) of the National Marine Sanctuaries Act, Federal actions near NMS may require consultation with the Secretary of Commerce. NOS also may be able to provide technical assistance related to nautical charts, coastal observing stations, GIS capabilities, and tide and current information.

The DOD, through the Office of the Deputy Under Secretary of Defense (Installations and Environment) Installations, Requirements and Management Directorate, will coordinate deepwater port license applications within the Department. DOD officials will review the applications for determination of impact on the Department's activities. DOD will notify Participating Agencies of any areas of concern and participate in any necessary discussions to adequately address DOD issues related to the proposed project.

The COE is responsible for the administration of laws for the protection and preservation of waters of the United States, including wetlands. Pursuant to the requirements of section 10 of the Rivers and Harbors Act of 1899, and section 404 of the Federal Water Pollution Control Act (FWPCA; also known as the Clean Water Act), the COE may issue authorizations for the discharge of dredged or fill material into navigable waters, including wetlands.



The DOE is charged with developing and coordinating national energy policy. In addition, DOE regulates the commodity import and export of natural gas, including LNG, under section 3 of the Natural Gas Act (NGA, 15 U.S.C. § 717(b)).

The USCG has been delegated the responsibility from the Secretary of DHS<sup>1</sup> and MARAD has been delegated authority from the Secretary of DOT to approve or deny any application for a deepwater port submitted pursuant to the DPA. In general, the USCG is the lead agency for compliance with NEPA and is responsible for matters related to navigation safety, engineering and safety standards, and facility inspections. MARAD is responsible for determining financial capability of the potential licensees, citizenship, and is responsible for preparing the project record of decision and issuing or denying the license. The various other responsibilities under the DPA, including the duty of consultation, are shared by USCG and MARAD.

The MMS, within DOI, is responsible for issuing and enforcing regulations to promote safe operations, environmental protection, and resource conservation for all mineral exploration, development, and production activities located in the OCS. In this role, MMS administers leasing and minerals royalty programs, oversees facility permitting, conducts NEPA analysis (e.g. air quality, archeology, biological impacts, socio-economic impacts, etc.), grants pipeline rights-of-way through submerged portions of the OCS, performs facility inspections (including safety related items as authorized by the USCG), maintains databases of facility (fixed, floating, and submerged) locations and attribute data, approves oil spill response plans, administers an operator bonding program, and engages in appropriate engineering and oil spill research.

Under the DPA, as amended, the Secretary of the Interior is also responsible for determining the fair market rental value of the "...subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed."

The FWS, within DOI, is responsible for the conservation, protection and enhancement of fish, wildlife, plants and their habitats. Pursuant to a number of environmental laws, including the ESA, MMPA, Migratory Bird Treaty Act, the FWCA, and the Coastal Barrier Resources Act FWS has principal trust responsibility for protecting and conserving migratory birds, certain threatened and endangered species, certain marine mammals, interjurisdictional fish, and certain coastal habitats. FWS manages the National Wildlife Refuge System (NWRS). The agencies processing the application for Federal licenses are required to consult with the FWS on projects potentially affecting any of these resources. The FWS also consults on projects potentially affecting fresh water or marine resources

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<sup>1</sup> The DPA provides authority to the Secretary of DOT to issue, amend, transfer or reinstate a license for ownership, construction or operation of a deepwater port. The Secretary of DOT delegated, in 49 C.F.R. § 1.46(s), to the Commandant of the USCG authority to process (in coordination with the Maritime Administration) applications for licenses under the DPA. Sections 888 and 1512 (d) of the Homeland Security Act of 2002 effectuate transfer of authority for USCG authorities and functions from the Secretary of DOT to the Secretary of DHS.

and water quality. In addition, the FWS may authorize use by permit for areas within the NWRS.

The DOS is responsible for providing its views on the adequacy of any deepwater port license application, and its effects on programs within its jurisdiction.

The RSPA, has been delegated authority from the Secretary of Transportation under the DPA to exercise powers and perform duties relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of deepwater port pipelines on Federal lands and the OCS. In addition, under 49 U.S.C. 60101, RSPA establishes Federal standards, through its Office of Pipeline Safety, for siting, design, construction, equipment, personnel qualifications and training, public education, fire protection, and security for LNG facilities under 49 C.F.R. Part 193.

The EPA is responsible for administering a wide variety of environmental laws. The responsibilities of EPA relevant to licensing of deepwater ports are primarily associated with assuring such deepwater ports conform with all applicable provisions of the Clean Air Act (CAA), as amended; the FWPCA, as amended; and the Marine Protection, Research, and Sanctuaries Act, as amended. EPA provides such assurance through communication with USCG and MARAD and through independent issuance of the permits that those laws require. If within 45 days of the last public hearing on a proposed license for a designated application area (DPA § 4(c)(6)), the EPA Administrator informs the Secretary of Transportation that the deepwater port will not conform to all applicable statutory and regulatory requirements under these statutes, the Secretary may not issue the license. In addition, under section 309 of the CAA, EPA publicly evaluates the completeness and adequacy of environmental impact statements (EISs) prepared by other Federal agencies and, if it finds a proposed project environmentally unsatisfactory from the standpoint of public health or welfare, or environmental quality, refers the matter to CEQ. Based on this NEPA oversight authority, EPA may refer an Environmental Assessment (EA)/Finding of No Significant Impact (FNSI) to CEQ if the underlying action requires an EIS or is unsatisfactory from the standpoint of public health or welfare, or environmental quality.

The FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. It issues certificates of public convenience and necessity for such pipelines under section 7 of the NGA and authorizes the construction and siting of facilities for the import or export of natural gas under section 3 of the NGA, including onshore LNG facilities. For natural gas deepwater ports, FERC will retain jurisdiction over any third-party offshore facilities not proposed or approved for construction as part of the deepwater port as well as any facilities to the landward side of the high water mark.

The CEQ was established within the Executive Office of the President in 1969 by NEPA. Its purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. CEQ has issued regulations (40 C.F.R. Parts 1500 through 1508) applicable to Federal agencies implementing NEPA.

IV. Responsibilities of Participating Agencies:

The Participating Agencies hereby agree to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. Specifically, each Participating Agency agrees to:

A. Commit to Early Involvement by:

1. Assessing its potential role in the environmental review of deepwater port licenses, as soon as practicable, after a prospective applicant, an applicant, or a Participating Agency makes a request for involvement in connection with a project under development. If a Participating Agency determines it has a role, it will:
  - a. Identify agency contacts for the proposed project. If a prospective applicant, an applicant, or Participating Agency needs assistance in determining regional, local or project specific contacts, the initial agency contacts will assist in identifying those contacts. The initial agency contacts for each Participating Agency for the purposes of this MOU are identified in Attachment A.
  - b. Meet with prospective applicants, applicants, other Participating Agencies, or the lead agencies when requested by the prospective applicant, applicant, a Participating Agency, or the lead agencies, or at its own initiative, to identify areas of potential concern and to assess the need for and availability of agency resources to address issues related to the proposed project.
  - c. Identify environmental issues and concerns related to the proposed project that need to be addressed in order for the lead agency to meet its obligations.
2. Conducting an early initial review of the deepwater port applications for completeness and accuracy and providing the USCG and MARAD with findings to assist in their "completeness" determination process, keeping in mind that the USCG and MARAD have 21 days from receipt of an application to determine whether or not it is complete. USCG and MARAD will notify all Participating Agencies immediately upon receipt of an application for a deepwater port license and require applicants to provide appropriate Participating Agencies (currently MMS, EPA, RSPA and NOAA Fisheries) with either a hard copy or access to an electronic copy of each application as soon as possible (see section IV(A)(3)(c) of this MOU). The appropriate Participating Agencies will be allowed at least five working days from the receipt of the appropriate number of copies of the application in order to complete requisite reviews and to provide the USCG and MARAD with recommendations as to the need for any additional information necessary for the agency to evaluate the application's impacts upon the agency's programs and areas of responsibility.
3. Conferring with the USCG and MARAD in establishing schedules. The USCG and MARAD will notify the other Participating Agencies as early as possible of actions in pending license application proceedings, including meetings with potential applicants.

The USCG and MARAD will then establish a schedule for the project review process, including key times for consultation. Such schedule will be as expeditious as possible and consistent with the periods for analysis and response that are required by the statutes and regulations applicable to the proposed project. The Participating Agencies will strive to ensure that individual permitting processes and related permit review activities occur on a concurrent, rather than sequential, basis with the objective of avoiding unnecessary delays in the process and the schedule established by USCG and MARAD. If at any point during the consultation process a Participating Agency anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability as soon as possible to USCG and MARAD. USCG and MARAD will then work with that agency to minimize the anticipated delay.

- a. In light of their DPA application processing and licensing responsibilities, USCG and MARAD will be the lead agencies for NEPA compliance for deepwater port applications. Participating Agencies may use this MOU as a cooperating agency agreement (CAA) with the lead agencies for the purpose of NEPA compliance or may enter into a supplemental CAA, which would augment this MOU.
- b. Under the DPA the USCG and MARAD will require prospective applicants to establish and maintain an electronic web-based repository in which all filings by the applicants for authorizations, including filings with local, state and Federal agencies, are made available to all Participating Agencies involved in their project. Some equivalent means of ensuring access to documents by Participating Agencies, such as the current Docket Management System used by DOT, may be used as a repository. The USCG and MARAD will use best efforts to ensure that the prospective applicants make each document available in the repository within 3 days after the document is filed. The repository also should include orders, requests and other pertinent documents. The applicant(s) will pay the cost of the repository.
- c. Under the DPA the USCG and MARAD will require applicants to submit hard copies of all application materials including detailed drawings and maps of the proposed facility and surrounding area, and, where possible, copies on a compact disk (CD), to agencies participating in the review process, ensuring that sufficient copies are distributed to both headquarters and field offices. All hard and CD copies will be at the expense of the applicant. Once deemed complete, the USCG and MARAD will use best efforts to ensure that the applicants provide copies to the Participating Agencies within 3 days of such determination.
- d. Through their contracts, the USCG and MARAD will require NEPA contractors to submit all interim and draft NEPA documents in hard copy and on CD to both headquarters and field offices of appropriate Participating Agencies to assist in expeditious review of materials. All hard and CD copies of the NEPA documents will be at the expense of the applicant.
- e. The USCG and MARAD will include in any Notice of Intent to Prepare an EIS or EA an announcement to the public regarding the process set forth in this MOU.

f. To facilitate participation, the USCG and MARAD will notify Participating Agencies of scoping meetings and public hearings as soon as possible after the meeting or hearing is scheduled and provide copies of scoping reports to the Participating Agencies as soon as possible.

B. Share Data. Subject to the laws governing access to information classified for purposes of national security, the Participating Agencies will share the information gathered, considered and relied upon by each of them. Specifically, the Participating Agencies agree to:

1. Subject to confidentiality requirements and exemptions from disclosure under the Freedom of Information Act, provide to the prospective applicant, applicant, and/or lead agencies, relevant studies, data (such as maps showing features over which the agency may have jurisdiction), and any other information concerning the status of matters the agency considers relevant (including matters that may be under consideration, such as proposing a species for listing as endangered or threatened, or proposing an area as a National Marine Sanctuary).
2. Cooperate in the preparation of requests for additional studies or data, avoid duplicative requests, and compile a consistent set of information on which all Participating Agencies will rely.
3. Cooperate in identifying and developing information at the level of detail required to complete environmental and cultural resources project review.
4. Cooperate in developing alternative pipeline routes, safety zones, anchorage areas, vessel recommended routes, port locations, and/or other actions.
5. Cooperate in developing mitigation measures that will be conditions of approval of the project. MARAD will make every effort to ensure that conditions of approval and/or project mitigations developed by Participating Agencies and provided to the Coast Guard and MARAD during NEPA proceedings and application engineering and operations reviews are considered in the development of the licensing document prepared by MARAD.

C. Communicate Informally. The Participating Agencies agree to communicate informally with the lead agencies early and throughout the process to ensure that issues are raised as soon as possible and shared among all agencies. The lead agencies will coordinate and share information with and among other Participating Agencies.

D. Resolve Disputes. Disputes regarding existing statutory requirements will be resolved by the relevant Participating Agencies using existing dispute resolution methods and in accordance with existing statutory authorities. With respect to disputes regarding the procedures set forth in this MOU, the Participating Agencies will confer informally with the CEQ, or its designee. If a Participating Agency identifies such a dispute with the

procedures of the MOU, it will notify all other Participating Agencies and make every attempt to resolve the issue.

If the dispute is not resolved within thirty (30) days of the notification of the dispute:

1. Any of the Participating Agencies involved in the dispute may forward the matter to the CEQ, or its designee.
2. The CEQ, or its designee, will make a written recommendation on resolution of the dispute within thirty (30) days of receiving the documentation from Participating Agencies, unless there is an agreement among all relevant Participating Agencies that the period should be extended for a particular reason.
3. Recommendations received from the CEQ, or its designee, will be taken into account by the lead agency in consultation with the relevant Participating Agencies, in a manner consistent with applicable law, when determining further actions regarding the subject of the dispute. Any recommendation not accepted by the lead or Participating Agencies will have to be fully explained in writing to the Chairman of the CEQ.
4. This opportunity to consult with the CEQ, or its designee, will be separate and apart from the opportunity to do so provided for in the CEQ's regulations at 40 C.F.R. Part 1504.

V. General Provisions:

- A. This MOU cannot be used to obligate or commit funds or as the basis for the transfer of funds. All provisions in this MOU are subject to the availability of funds.
- B. This MOU does not supersede existing agreements among any of the signatories.
- C. This MOU may be modified or amended upon written request of any Participating Agency hereto and the subsequent written concurrence of all of the Participating Agencies. Participation in this MOU may be terminated sixty (60) days after a Participating Agency provides written notice of such termination to the other Participating Agencies.
- D. This MOU is intended only to improve the cooperation among the Participating Agencies to expedite decisions on deepwater ports. It is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOU is not intended to direct or bind any person outside the Participating Agencies.
- E. This MOU neither expands nor is in derogation of those powers and authorities vested in the Participating Agencies by applicable law.

F. This MOU does not affect any guidelines related to information quality issued by the Participating Agencies in connection with section 515 of the Treasury and General Government Appropriations Act for FY 2001 (P.L. 106-554). Information disseminated pursuant to this MOU will be subject to the information quality guidelines of the Participating Agency that disseminates the information and the process by which requests for correction of such information will be addressed will be that established by the agency that disseminated the information.

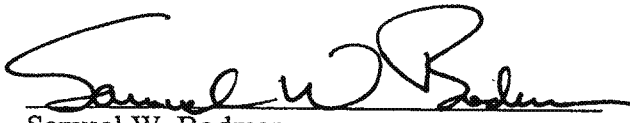
G. This MOU is solely for the purpose of establishing internal procedures for Federal agencies to consider and deal with the various environmental responsibilities in the context of applications submitted pursuant the DPA, and nothing in this MOU shall be construed to create a cause of action.

VI. Principal Contacts:

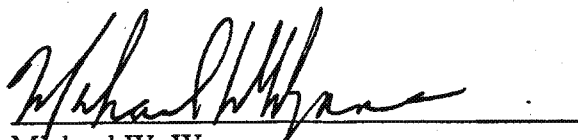
The Participating Agencies designate agency contacts identified in Attachment A. These contacts may be changed at the Participating Agency's discretion upon notice to the other Participating Agencies. Attachment A will be updated as needed and verified on an annual basis.

VII. Effective Date and Duration:

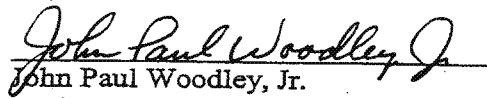
This MOU is effective upon the date of the last signatory and will expire five years from that date unless extended or terminated earlier by mutual agreement of the Participating Agencies.

  
Samuel W. Bodman  
Deputy Secretary  
Department of Commerce

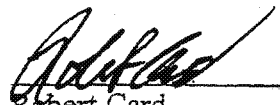
3 Feb '04  
Date

  
Michael W. Wynne  
Acting Under Secretary of Defense (AT&L)  
Department of Defense

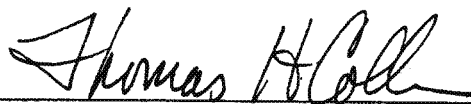
3/15/04  
Date

  
John Paul Woodley, Jr.  
Assistant Secretary of the Army (Civil Works)  
Department of Defense

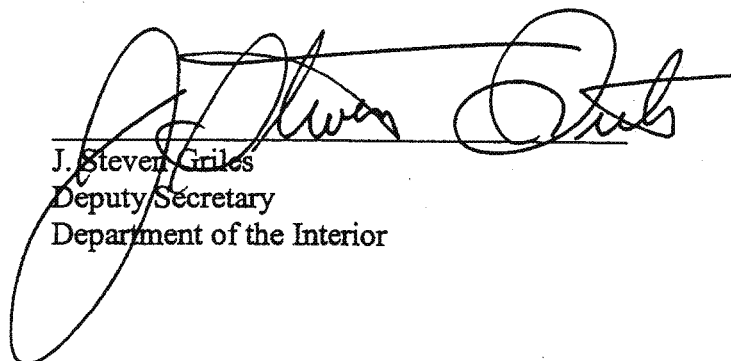
18 December 2003  
Date

  
Robert Card  
Under Secretary  
Department of Energy

1/23/04  
Date

  
Admiral Thomas H. Collins  
Commandant, United States Coast Guard  
Department of Homeland Security

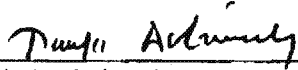
JAN 13 2004  
Date

  
J. Steven Griles  
Deputy Secretary  
Department of the Interior

Dec 15, 2003  
Date



## MOU: Licensing of Deepwater Ports



Paula Dobriansky  
Under Secretary for Global Affairs  
Department of State

3/1/04

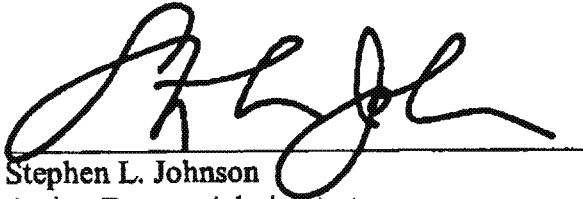
Date



Kirk E. Van Tine  
Acting Deputy Secretary  
Department of Transportation

5/12/04

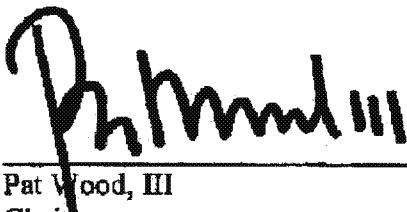
Date



Stephen L. Johnson  
Acting Deputy Administrator  
Environmental Protection Agency

JAN 14 2004

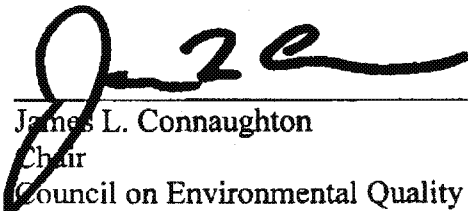
Date



Pat Wood, III  
Chairman  
Federal Energy Regulatory Commission

12 Jan 04

Date



James L. Connaughton  
Chair  
Council on Environmental Quality

2/23/04

Date

## **Attachment A: Participating Agency Contacts**

The following are the principle initial contacts for each agency:

### Department of Commerce

Karen Abrams  
Marine Resource Habitat Specialist  
Office of Habitat Protection  
NOAA Fisheries  
1315 East West Highway, SSMC3  
Silver Spring, MD 20910  
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301-713-4300 x149 (voice)  
301-713-1043 (fax)

David Kaiser  
Federal Consistency Coordinator  
Office of Ocean and Coastal Resource Management  
NOAA Ocean Service  
1305 East West Highway, 11<sup>th</sup> Floor (N/ORM3)  
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### Department of Defense

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Office of the Deputy Under Secretary of Defense  
Installations & Environment  
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Dr. Get Moy  
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MOU: Licensing of Deepwater Ports, Attachment A

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Assistant for Environment, Tribal and Regulatory Affairs  
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703-697-8433 (fax)

Department of Energy

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Department of Homeland Security

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Department of the Interior

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Chief, Branch of Federal Activities  
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Department of State

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Department of Transportation

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MOU: Licensing of Deepwater Ports, Attachment A

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Environmental Protection Agency  
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Federal Energy Regulatory Commission

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Federal Energy Regulatory Commission  
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Council on Environmental Quality

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Council on Environmental Quality  
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202-456-0753 (fax)